

No. 12754

1668

United States
Court of Appeals
for the Ninth Circuit.

LEON TOMCZAK and HELEN TOMCZAK,
Appellants,

vs.

UNITED STATES OF AMERICA,
Appellee.

Transcript of Record

Appeal from the District Court of the United States
Northern District of California,
Southern Division.



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

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550 Russ Building,
San Francisco, California,

Attorney for Defendants and Appellants.

SIDNEY FEINBERG,

WILLIAM B. SPOHN,

Office of the Housing Expediter,
821 Market Street,
San Francisco, California,

Attorneys for Plaintiff and Appellee.

United States District Court for the Northern
District of California, Southern Division
No. 29257G

UNITED STATES OF AMERICA,
Plaintiff,
vs.

LEON TOMCZAK and HELEN TOMCZAK,
Defendants.

COMPLAINT FOR INJUNCTION,
RESTITUTION AND TREBLE DAMAGES

Count I.

1. In the judgment of the Housing Expediter, the defendants have engaged in acts and practices which constitute violations of Section 206(a) of the Housing and Rent Act of 1947, as amended (50 U.S.C.A. App. 1881, 1906; Public Law 31, 81st Congress, 1st Session).

2. Jurisdiction of this action is conferred upon this Court by Sections 206(b) and 206(c) of said Housing and Rent Act of 1947, as amended.

3. At all times mentioned herein defendants were the landlords of and rented certain controlled housing accommodations located within the San Francisco Bay Defense-Rental Area, and described as 1433 Clay Street, City and County of San Francisco, California.

4. Since July 1, 1947, there has been in full force and effect pursuant to said Housing and Rent

Act of 1947, as amended, the Rent Regulations issued pursuant to said Act, establishing a maximum rental for the use and occupancy of housing and rental accommodations within the defense-rental area in which the premises referred to in Paragraph 3 of Count I above are located.

5. Since July 1, 1947, defendant demanded and received from tenant occupying the premises described in Paragraph 3 of Count I above, rentals in excess of the lawful rental permitted by said Rent Regulations, as appears more fully in Items 1(a) and 1(b) of Schedule marked Exhibit "A" attached hereto and by reference made a part hereof.

6. Since July 1, 1947, defendants demanded, accepted or received as rent for other terms of occupancy or from other tenants or for other premises rentals in excess of the lawful maximum permitted by said Rent Regulations, the terms of which occupancy or the names of which tenants or the premises involved being presently unknown to the Plaintiff.

Count II.

1. Plaintiff incorporates herein by reference the allegations in Paragraphs 3 and 4 of Count I of his Complaint herein.

2. Jurisdiction of this action is conferred upon this Court by Sections 205 and 206(c) of said Housing and Rent Act of 1947, as amended.

3. Since July 1, 1947, and within one (1) year prior to the date of the commencement of this action (exclusive of the thirty (30) day period immediately prior to the date of the commencement of this action), to wit: between November 1, 1948, and September 1, 1949, defendants demanded and received from tenant occupying the premises described in Paragraph 3 of Count I above, rentals in excess of the lawful rental permitted by said Rent Regulations, as appears more fully in Item 2(a) of Schedule marked Exhibit "A" attached hereto and by reference made a part hereof.

4. Since July 1, 1947, and within one (1) year prior to the date of the commencement of this action (exclusive of the thirty (30) day period immediately prior to the date of the commencement of this action) defendants have demanded, accepted or received as rent for other terms of occupancy or from other tenants or for other premises rentals in excess of the lawful maximum permitted by said Rent Regulations, the terms of which occupancy or the names of which tenants or the premises involved being presently unknown to the Plaintiff.

5. More than thirty (30) days have elapsed since the occurrence of the violations hereinabove alleged, and the persons from whom such excess rental payments were demanded, accepted or received have not instituted any action under Section 205 of the Housing and Rent Act of 1947, as amended, for said violations.

Wherefore, the Plaintiff demands and prays:

1. That an injunction be issued enjoining the defendants, their attorneys, agents, servants and employees and all other persons in active concert or participation with the defendants from directly or indirectly demanding, accepting or receiving rents in excess of the maximum rents established by any Regulation or Order heretofore or hereafter adopted, pursuant to the Housing and Rent Act of 1947, as heretofore or hereafter amended, or extended, or superseded, or from engaging in any acts and practices which constitute or will constitute a violation of any of the provisions of the Housing and Rent Act of 1947, as amended, or extended, or superseded, or of the Rent Regulations issued pursuant thereto.

2. That the defendant be ordered and directed to pay to the Treasurer of the United States, for and on behalf of all persons entitled thereto, a refund of all amounts (the amount presently ascertained by the Plaintiff being the sum of Nine Hundred One and 25/100 Dollars (\$901.25), in excess of the lawful maximum rents which have been or may be demanded, accepted or received by the defendant from any tenants for or in connection with the use or occupancy of the housing accommodations hereinbefore described; or, in the alternative, that the defendant be ordered and directed to pay the amounts in excess of the lawful maximum rents as hereinabove prayed, to the Treasurer of the United States.

3. That judgment for the Plaintiff be granted herein for Eight Hundred Twenty-five Dollars (\$825.00), being three times the amount by which the rents demanded, accepted or received by defendant within one (1) year prior to the date of the commencement of this action (excluding, however, the thirty (30) days immediately prior to the date of the commencement of this action) exceeded the legal maximum rent; provided, however, that in the event this Court requires the defendant to make refunds as prayed for, the amount sought in judgment in this paragraph be the sum of Five Hundred Fifty Dollars (\$550.00).

4. That such other, different or further relief to which Plaintiff may be entitled be granted, or other relief be accorded which the Court may find necessary to effectuate the purposes of the said Act as now existing, or hereafter amended or superseded, and of any orders or regulations issued thereunder.

5. That Plaintiff recover the costs of this action.

Dated this 25th day of October, 1949.

/s/ GEORGE L. BASYE,
Attorney for Plaintiff,
Office of Housing Expediter.

EXHIBIT A

Leon and Helen Tomczak		Schedule		Maximum		Number of Overcharges	Amt. of Each Overcharge	Overcharge to Each Tenant	Amount Subject to Treble Damages
Item	Tenant	Unit	Date Rented	Rent Collected	Legal Rent				
1(a)	Albert W. Niggemeyer and Norma J. Niggemeyer	Apt. 14 1433 Clay St. San Francisco, Calif.	11-13-47 to 9-1-49	\$75.00 per mo.	\$47.50 per mo.	21½	\$27.50	\$591.25	
1(b)	Albert W. Niggemeyer and Norma J. Niggemeyer	Apt. 14 1433 Clay St. San Francisco, Calif.	11-13-47	\$310.00—For decorating apartment, as condition precedent to obtaining premises				\$310.00	
2(a)	Albert W. Niggemeyer and Norma J. Niggemeyer	Apt. 14 1433 Clay St. San Francisco, Calif.	11-1-48 to 9-1-49	\$75.00 per mo.	\$47.50 per mo.	10	\$27.50		\$275.00

[Endorsed]: Filed November 1, 1949.

[Title of District Court and Cause.]

PLAINTIFF'S REQUEST FOR ADMISSIONS

To: Leon and Helen Tomczak, 1433 Clay Street,
Apt. #1, San Francisco, California.

For the purpose of this action only, pursuant to the provisions of Rule 36, as amended, of the Federal Rules of Civil Procedure, and within 10 days after service of this Request, Plaintiff requests the Defendants to admit the genuineness of the documents described and exhibited herewith, if any, and to admit the truth of the following relevant matters of fact.

1. That at all times material to this action Defendants were the landlords of certain controlled housing accommodations, more particularly described and set forth in Exhibit A attached to Plaintiff's Complaint, which schedule is by reference incorporated herein.

2. That the items in said schedule truthfully and correctly designate the names of the tenants who occupied the designated housing accommodations.

3. That the items in said schedule truthfully and correctly designate the periods said tenants occupied said accommodations.

4. That the items in said Exhibit A truthfully and correctly designate the rentals collected from said tenants.

5. That the items in said Exhibit A truthfully and correctly designate the amounts demanded and

received for other fees or services from said tenants.

6. That said schedule truthfully and correctly designates the registered legal rents in force for the indicated housing accommodations for the periods of time referred to in request No. 3.

Dated this 9th day of December, 1949.

/s/ REUEL K. YOUNT,
Attorney for Plaintiff.

Affidavit of Service by Mail attached.

[Endorsed]: Filed December 12, 1949.

[Title of District Court and Cause.]

ANSWER

Come now the defendants Leon Tomczak and Helen Tomczak and answering the complaint on file herein, admit, deny and allege as follows:

I.

Making answer to Paragraphs 5 and 6 of Count I of said complaint, these defendants deny generally and specifically, each and every, all and singular the allegations therein contained.

II.

Making answer to Paragraphs 3, 4 and 5 of Count II of said complaint these defendants deny generally and specifically each, and every, all and singular, the allegations therein contained.

Wherefore, defendants pray that plaintiff taking

nothing by its complaint and that they be hence dismissed.

CHRISTIN, KEEGAN &
CARROLL,

By /s/ CHARLES A. CHRISTIN,
Attorneys for Defendants.

[Endorsed]: Filed December 15, 1949.

[Title of District Court and Cause.]

DEFENDANTS' REPLY TO PLAINTIFF'S
REQUEST FOR ADMISSIONS

Come now the defendants above named and make this their reply to plaintiff's request for admissions.

I.

Defendants admit requests for admissions Nos. 1, 2, 3, 4 and 5.

II.

Defendants deny Request for Admission No. 6 and in this respect allege that the premises described in the schedule attached to plaintiff's complaint on file were decontrolled by reason of the filing of Form D96 with the Office of the Housing Expediter in and for the San Francisco Bay-Defense Rental Area, which referred to the termination of a lease originally filed with the said Housing Expediter, and designated as No. 01528.

That the defendants herein filed a Petition for Adjustment of Rent with the Office of Housing

Expediter on September 30, 1949, and that on December 30, 1949, by an order in writing in proceedings No. HL-18450 the rent for said premises was fixed at the sum of \$54.62 per month.

CHRISTIN, KEEGAN &
CARROLL,

By /s/ CHARLES A. CHRISTIN,
Attorneys for Defendants.

State of California,
City and County of San Francisco—ss.

Helen Tomczak, being first duly sworn, deposes and says:

That she is one of the defendants named in the above-entitled action; that she has read the foregoing Reply to Plaintiff's Request for Admissions and knows the contents thereof; that the same is true of her own knowledge except as to matters therein stated upon information and belief and as to those matters she believes it to be true.

/s/ HELEN TOMCZAK.

Subscribed and sworn to before me this 24th day of January, 1950.

[Seal] /s/ LOUIS WIEHER,
Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed January 24, 1950.

[Title of District Court and Cause.]

NOTICE OF MOTION TO FILE
AMENDMENT TO ANSWER

To the Plaintiff, United States of America, and to
Messrs. Sidney Feinberg and William B.
Spohn, Its Attorneys:

You, and Each of You, Will Please Take Notice
that on Thursday, May 11, 1950, at the hour of ten
o'clock a.m., the undersigned will move to file
amendment to answer, a copy of which is hereto
attached and made a part hereof.

Said motion will be made on the ground that it
constitutes a proper defense in said proceedings
and was not filed prior hereto by reason of the
fact that there was a doubt as to whether or not
the law applicable to the admission of evidence to
sustain the allegations in said amendment to said
answer, as the decisions of the Appellate Courts
now indicate.

Dated: May 10, 1950.

CHRISTIN, KEEGAN &
CARROLL,
CHARLES A. CHRISTIN,

By /s/ CHARLES A. CHRISTIN,
Attorneys for Defendants.

[Title of District Court and Cause.]

AMENDMENT TO ANSWER

Leave of court first had and obtained, defendants file this their amendment to their Answer on file herein, and allege as follows:

I.

That should it develop that the said defendants demanded and received rentals higher than the maximum rents permitted by said rent regulations for the use and occupancy of the premises at Apartment 14, 1433 Clay Street, in the City and County of San Francisco, they did said acts in good faith and without any intention of violating such regulations and without knowledge that the said rents were higher than the said maximum rents, and the said alleged violations were neither wilful nor the result of said defendants' failure to take practical precautions against the occurrence of the said violation.

CHRISTIN, KEEGAN &
CARROLL,

By /s/ CHARLES A. CHRISTIN,
Attorneys for Above-Named
Defendants.

State of California,
City and County of San Francisco—ss.

Helen Tomczak, being first duly sworn, deposes and says:

That she is one of the defendants named in the above-entitled action; that she has read the fore-

going Amendment to Answer and knows the contents thereof; that the same is true of her own knowledge except as to matters therein stated upon information and belief and as to those matters she believes it to be true.

/s/ HELEN TOMCZAK.

Subscribed and sworn to before me this 20th day of April, 1950.

[Seal] /s/ JEAN M. WINTERMANN,
Notary Public in and for the City and County of
San Francisco, State of California.

My Commission Expires January 4, 1951.

Receipt of copy acknowledged.

[Endorsed]: Filed May 11, 1950.

[Title of District Court and Cause.]

ORDER FOR JUDGMENT

Plaintiff's motion for judgment on the pleadings is denied. Defendants' motion to file amendment to answer is granted.

On the merits, judgment will go for the plaintiff for the sum of \$901.25 restitution; \$412.50 damages and costs.

Submit findings pursuant to the Rules.

Dated: May 12, 1950.

/s/ LOUIS E. GOODMAN,
United States District Judge.

[Endorsed]: Filed May 12, 1950.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-entitled cause was commenced on November 1, 1949, the Plaintiff seeking an injunction and restitution under Section 206(b) and treble damages under Section 205 of the Housing and Rent Act of 1947, as amended (50 U.S.C. App. 1881, et seq.). Personal service of the complaint and summons as required by the Federal Rules of Civil Procedure was made by a Deputy United States Marshal on November 8, 1949.

Thereafter, following Defendant's answers to the complaint and request for admissions by the Plaintiff, the cause came regularly on for trial on May 11, 1950, before this Court, the Honorable Louis E. Goodman, Judge presiding, and the Plaintiff appearing by its counsel, William B. Spohn, and the Defendants in person and by their counsel, Charles A. Christin. At the conclusion of trial, evidence both oral and documentary having been introduced by and on behalf of the respective parties and after oral argument by counsel, the Court being fully advised in the premises made its order for judgment, pursuant to which are the following:

Findings of Fact

1. That the housing accommodations described in the Plaintiff's complaint are located within the San Francisco Bay Defense-Rental Area.

2. That at all times material to this action, the maximum legal rent prescribed under the aforesaid Act and the Regulations issued pursuant thereto for said housing accommodations was \$47.50 per month, as specified in the complaint herein.

3. That the Defendants, beginning on or about November 13, 1947, and continuing to or about September 1, 1949, in violation of the aforesaid Act and Regulations, did demand, accept and receive from the tenants, Albert W. Niggemeyer and Norma J. Niggemeyer, payments of rent in excess of said maximum legal rent in the amount of \$591.25.

4. That the Defendants, on or about November 13, 1947, in further violation of the aforesaid Act and Regulations, did require as a condition of rental that said tenants have the housing accommodations repainted and redecorated at their own expense, which the tenants did at a cost of \$310.

5. That such excess rents were demanded, accepted and received, and such painting and decorating costs were required by the Defendants on the assumption that the housing accommodations had been removed from control by virtue of an expired lease between the Defendants and a previous tenant, which lease had purportedly been executed pursuant to the provisions of Section 204(b) of the aforesaid Housing and Rent Act and the pertinent Regulations.

6. That said lease was submitted by the Defendants to the San Francisco Bay Defense-Rental

Area Office on or about July 15, 1947, but upon examination was rejected by the Area Rent Director as not conforming with the requirements of the aforesaid Act and Regulations in that neither the lease nor the accompanying registration form contained or showed a date of execution, and were accordingly returned to the Defendants as not acceptable, together with a notice of such action specifying the reason therefor.

7. That said lease was again submitted by the Defendants to the San Francisco Bay Defense-Rental Area Office on or about July 21, 1947, and upon re-examination was again rejected by the Area Rent Director as not conforming with the requirements of the aforesaid Act and Regulations in that the lease contained certain improper provisions, and was again returned to the Defendants as not acceptable, together with a notice of such action specifying the reason therefor.

8. That the Area Rent Director's determination that said lease did not conform with the requirements of the aforesaid Act and Regulations is supported by substantial evidence showing that the lease contained provisions for a substantial increase in rent as well as a substantial decrease or reduction in services to be provided the tenants by the Defendant as landlord.

9. That on or about May 26, 1948, the Defendants filed with the San Francisco Bay Defense-Rental Area Office a report of termination of said lease, following which the Area Rent Director by

letter dated June 28, 1948, informed the Defendants that the lease had previously been rejected as defective and that in the opinion of the Area Rent Director the housing accommodations in question were not subject to decontrol.

10. That following the aforesaid rejections of the lease by the Area Rent Director the Defendants have wholly failed, neglected or refused to file with the San Francisco Bay Defense-Rental Area Office either new, modified or corrected leases but have entirely disregarded the applicable provisions of the aforesaid Act and Regulations in the rental and operation of the housing accommodations in question.

11. That following the aforesaid rejection of the lease by the Area Rent Director, the Defendants took no steps nor instituted any proceedings either to appeal from the action of the Area Rent Director or to have such action reviewed as provided in the Rent Procedural Regulations issued pursuant to the Housing and Rent Act.

Conclusions of Law

1. That the Court has jurisdiction of the subject matter of this action and of the parties under Section 206(b) of the aforesaid Housing and Rent Act.

2. That the aforesaid housing accommodations were at all times material to this action controlled under the aforesaid Act and Regulations.

3. That the lease purportedly entered into between the Defendants and the previous tenant, as specified in the foregoing Findings of Fact, was neither valid nor effective to increase the legal maximum rent for the housing accommodations in question nor to remove said accommodations from control upon the expiration or termination of said lease.

4. That the Defendants by demanding, accepting and receiving the excess payments of rent and requiring the repainting and redecorating of the accommodations, as specified in the foregoing Findings of Fact, did wilfully violate the aforesaid Act and Regulations.

5. That the Defendants have both failed to pursue and exhaust the prescribed administrative remedies for appeal from or review of the actions of the Area Rent Director specified in the foregoing Findings of Fact.

6. That the Plaintiff, on account of said wilful violations, is entitled to an injunction against any further violations by the Defendants under the aforesaid Act and Regulations, as prayed for in its complaint.

7. That the Plaintiff, on account of said wilful violations, is entitled to a judgment and decree requiring and directing the Defendants to forthwith refund to the Plaintiff on behalf of the aforesaid tenants the excess amounts wilfully demanded, accepted and received by the Defendants for rental

of the specified housing accommodations together with the amount required by the Defendants to be expended by the said tenants for the repainting and redecorating of said accommodations in the total sum of Nine Hundred One and 25/100 Dollars (\$901.25).

8. That the Plaintiff, on account of the afore-said wilfull violations, is entitled to treble damages for all such violations occurring since April 1, 1949, the effective date of the 1949 amendment of the Housing and Rent Act, in the amount of Four Hundred Twelve and 50/100 Dollars (\$412.50).

9. That the Plaintiff is further entitled to its costs in this action.

Let judgment be entered in accordance herewith.

Dated this 8th day of June, 1950.

/s/ LOUIS E. GOODMAN,

United States District Judge.

Lodged June 2, 1950.

[Endorsed]: Filed June 8, 1950.

United States District Court for the Northern
District of California, Southern Division
No. 29257

UNITED STATES OF AMERICA,
Plaintiff,
vs.

LEON TOMCZAK and HELEN TOMCZAK,
Defendants.

JUDGMENT AND DECREE

An Order for Judgment, Findings of Fact, and Conclusions of Law having been filed in the above-entitled cause,

Wherefore, by reason of the law, the evidence, and the premises contained in said Order, Findings, and Conclusions,

It Is Hereby Ordered, Adjudged, and Decreed that the Defendants, Leon Tomczak and Helen Tomczak, their attorneys, agents, servants, employees and all other persons in active concert or participation with the Defendants, be and they hereby are permanently enjoined and restrained from directly or indirectly demanding, accepting or receiving rents in excess of the maximum rents established by any regulation or order heretofore or hereafter adopted pursuant to the Housing and Rent Act of 1947, as heretofore or hereafter amended, or extended, or superseded, or from engaging in any other acts or practices which constitute or will constitute a violation of the said Housing and Rent Act or of any regulation or order adopted pursuant thereto.

It Is Further Ordered, Adjudged, and Decreed that the Defendants be and they hereby are required and directed to forthwith make restitution to the Plaintiff on behalf of the tenants, Albert W. Niggemeyer and Norma J. Niggemeyer, overcharged by the Defendants for rental and required to repaint and redecorate the housing accommodations specified in this cause, in the total amount of Nine Hundred One and 25/100 Dollars (\$901.25).

It Is Further Ordered, Adjudged, and Decreed that the Plaintiff do have and recover of and from the Defendants the sum of Four Hundred Twelve and 50/100 Dollars (\$412.50) to be paid forthwith as treble damages for the wilfull violations of the aforesaid Housing and Rent Act and Regulations occurring since April 1, 1949.

It Is Further Ordered, Adjudged, and Decreed that the Defendants be and they are hereby required and directed to forthwith pay the Plaintiff's costs herein (to be taxed by the Clerk) in the amount of, all said payments to be made by the Defendant to the Treasurer of the United States at the Litigation Section of the Office of the Housing Expediter, Room 712, 821 Market Street, San Francisco, California.

Dated this 8th day of June, 1950.

/s/ LOUIS E. GOODMAN,

United States District Judge.

Lodged June 2, 1950.

[Endorsed]: Filed June 8, 1950.

[Title of District Court and Cause.]

To: Mr. Sidney Feinberg, Attorney, 821 Market Street, Room 720, San Francisco, Calif.

Messrs. Christin, Keegan & Carroll, Attorneys,
Russ Building, San Francisco, Calif.

NOTICE OF ENTRY OF JUDGMENT

You Are Hereby Notified that on June 9, 1950, a Decree and Judgment was entered of record in this office in the above-entitled case.

C. W. CALBREATH,
Clerk, U. S. District Court.

San Francisco, California, June 9, 1950.

[Title of District Court and Cause.]

PROPOSED AMENDMENTS TO FINDINGS OF FACT AND CONCLUSIONS OF LAW

The defendants above named file the following Proposed Amendments to Findings of Fact and Conclusions of Law:

On Page 3 of the Proposed Findings of Fact after line 17, add Paragraph 9 (a) reading as follows:

That on the 30th day of September, 1949, the defendants filed on Form D-114, supplied by the Housing Expediter and designated "Landlord's Petition for Adjustment in Rent Due to Minor Defect

in a Statutory Lease” and there was included in said document:

“The notice states ‘Improper Provisions’ and checked deposit on keys and deposit against the closing bill.

“No deposit has been taken at any time from any of the tenants for the keys or closing bill.”

Thereafter the Housing Expediter by written order corrected said lease and so specified in his order of December 30, 1949.

That the correction as made by the Housing Expediter eliminates any objection which the Housing Expediter had at the time that he returned and rejected the said lease.

Respectfully submitted:

CHARLES A. CHRISTIN,
CHRISTIN, KEEGAN &
CARROLL,

By /s/ CHARLES A. CHRISTIN,
Attorneys for Defendants.

Affidavit of service by mail attached.

[Endorsed]: Filed June 9, 1950.

[Title of District Court and Cause.]

MOTION FOR A NEW TRIAL AND TO
VACATE JUDGMENT

To the Plaintiff Above Named and to Messrs. Sidney Feinberg and William B. Spohn, Its Attorneys:

You, and Each of You, Will Please Take Notice that the defendants Leon Tomczak and Helen Tomczak, intend to and will move the above-entitled Court, to vacate and set aside the judgment made and filed on June 9, 1950, and entered on said date, and to grant a new trial in the premises.

Said motion will be based upon this notice, upon all the papers, files, pleadings and proceedings herein, upon the minutes of the Court, and will be made upon each of the following grounds:

1. Irregularity in the proceedings of the Court by which defendants were prevented from having a fair trial.

2. Accident and surprise, which ordinary prudence could not have guarded against.

3. Insufficiency of the evidence to justify the decision entered thereon, and that said decision is against law.

4. Errors in law occurring at the trial and excepted to by defendants.

5. That said Court was without jurisdiction to make and enter said judgment.

6. Newly discovered evidence material for the

parties making this motion for a new trial, which evidence could not with reasonable diligence have been discovered and produced at the trial.

Dated: June 19, 1950.

/s/ CHARLES A. CHRISTIN,

Attorney for Defendants.

[Endorsed]: Filed June 19, 1950.

[Title of District Court and Cause.]

NOTICE OF MOTION FOR A NEW TRIAL
AND TO VACATE JUDGMENT

To the Plaintiff Above Named and to Messrs. Sidney Feinberg & William B. Spohn, Its Attorneys:

You, and Each of You Will Please Take Notice that the defendants Leon Tomczak and Helen Tomczak intend to and will move the above-entitled Court on the 3rd day of July, 1950, at the hour of ten o'clock a.m., or as soon thereafter as counsel can be heard, at the courtroom of the above-entitled Court Room 258, located at the Post Office Building, State of California, to vacate and set aside the judgment made and filed in the above-entitled matter, and to grant a new trial in the premises.

Dated: June 19, 1950.

/s/ CHARLES A. CHRISTIN,

Attorney for Defendants.

[Endorsed]: Filed June 19, 1950.

[Title of District Court and Cause.]

ORDER DENYING MOTIONS

Defendants' motions to vacate judgment and for a new trial are hereby denied.

Dated: July 26, 1950.

/s/ LOUIS E. GOODMAN,
United States District Judge.

[Endorsed]: Filed July 27, 1950.

[Title of District Court and Cause.]

NOTICE OF APPEAL

To the Circuit Court of Appeals:

Notice Is Hereby Given that Leon Tomczak and Helen Tomczak, the defendants in the above proceedings, hereby appeal to the Circuit Court of Appeals for the Ninth Circuit from the final judgment made and entered on June 8, 1950, and a motion for new trial denied by the District Court on July 26, 1950.

Dated: September 22, 1950.

/s/ CHARLES A. CHRISTIN,
Attorney for Defendants and
Appellants.

[Endorsed]: Filed September 25, 1950.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO
RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States for the Northern District of California, do hereby certify that the foregoing documents and accompanying exhibits, listed below, are the originals filed in this Court, in the above-entitled case, and that they constitute the Record on Appeal herein, as designated by the Appellants, to wit:

Complaint for Injunction, Restitution and Treble Damages.

Plaintiff's Request for Admissions.

Answer.

Defendants' Reply to Plaintiff's Request for Admissions.

Notice of Motion to File Amendment to Answer and Amendment to Answer.

Order for Judgment.

Findings of Fact and Conclusions of Law.

Judgment and Decree.

Notice of Entry of Judgment.

Proposed Amendments to Findings of Fact and Conclusions of Law.

Motion for a New Trial and to Vacate Judgment.

Notice of Motion for a New Trial and to Vacate Judgment.

Order Denying Motions to Vacate Judgment and for a New Trial.

Notice of Appeal.

Order Extending Time to File Cost Bond and Designation of Authorities.

Designation of Record on Appeal of Appellants, Leon Tomczak and Helen Tomczak.

Plaintiff's Exhibits Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12.

Defendants' Exhibit No. A.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court this 17th day of November, A.D. 1950.

C. W. CALBREATH,
Clerk.

[Seal] By /s/ M. E. VAN BUREN,
Deputy Clerk.

[Endorsed]: No. 12,754. United States Court of Appeals for the Ninth Circuit. Leon Tomczak and Helen Tomczak, Appellants, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division. Filed November 27, 1950.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit
Docket No. 12,754

UNITED STATES OF AMERICA,
Plaintiff and Respondent,

vs.

LEON TOMCZAK and HELEN TOMCZAK,
Defendants and Appellants.

STATEMENT OF POINTS ON WHICH
APPELLANTS INTEND TO RELY

To the Plaintiff, United States of America, and
Messrs. Sidney Feinberg and William B.
Spohn, Its Attorneys:

Please Take Notice that Leon Tomczak and Helen Tomczak, appellants in the above-entitled cause, intend to rely on the following points on appeal:

That the District Court of the United States erred:

1. In holding and deciding that the "15 per cent lease" filed by the appellants with the Office of the Housing Expediter did not conform with the requirements of Section 204-B of the Housing and Rent Act of 1947.

2. In ordering, adjudging and decreeing that appellants make restitution to the plaintiff on behalf of the tenants in the amount of \$901.25.

3. In rendering an opinion and decision which in the respects above enumerated are contrary to law and the regulations and are not supported by the evidence in case.

4. In refusing to grant appellants' motion for a new trial.

Dated: November 29, 1950.

/s/ CHARLES A. CHRISTIN,
Attorney for Appellants.

[Endorsed]: Filed November 30, 1950.